

## PART 7 INVESTIGATION PROCESSES

### Chapter 38: Laying the Groundwork for the Investigation

#### FINDINGS

(1) **The Committee's investigation was not bipartisan.** The Committee's investigation focused predominantly on persons and entities associated with the Democratic Party. The Majority devoted virtually no resources to exploring a variety of serious allegations against those affiliated with the Republican Party. Moreover, it refused to issue or enforce many of the Minority-requested subpoenas related to the Committee's mandate, simply because those subpoenas sought information from Republican-related persons and entities. When the Minority accumulated substantial evidence of Republican wrongdoing despite these significant limitations, the Majority refused to schedule hearings to allow for the public airing of this information. As a result, virtually all of the Majority's investigatory resources and Committee hearings focused upon activities involving the Democratic Party and its associates.

(2) **Although the Committee's investigation provided insight on the serious shortcomings in our campaign finance system, the failure to fully and impartially investigate wrongdoing in the 1996 federal elections, regardless of party, kept the Committee from fulfilling its mandate and eliminated the ability to produce a bipartisan report.** The Committee's hearings did make a contribution to the public's understanding of the ways in which money influenced the 1996 elections. As a consequence of the investigation's partisanship, the Committee cannot credibly claim that it offered the American people a complete picture of the illegal or improper activity that occurred during the 1996 federal elections. The Committee virtually ignored at least half of the story of those elections, and the partisan framework in which it presented and interpreted the evidence it did uncover diminishes the Committee's ultimate findings and conclusions.

#### INTRODUCTION

Shortly before the 1996 federal elections, several news organizations reported that the Democratic National Committee may have received illegal contributions of foreign money and engaged in other fundraising improprieties. These reports prompted the Senate early in the 105th Congress to order an investigation into possible illegal and improper campaign finance activities during the 1996 federal election cycle. Responsibility for conducting the investigation was given to the Senate Governmental Affairs Committee, which has the broadest oversight jurisdiction of any Senate committee and a long history of amicable working relationships between the Majority and Minority membership.

The importance of this assignment cannot be overstated. Clean and fair elections lie at the very heart of our democratic system of government, and the American people are entitled to know whether the electoral process was compromised or corrupted during the 1996 election cycle. This was not only an important assignment, it was an extremely delicate one: A committee of the Senate would be investigating the process by which the Senate's own members and the sitting President and vice President had been elected. In addition, assurances from the Chairman seemed to guarantee that the Committee would be investigating allegations against both national parties and their candidates.

In such circumstances, the temptation to use the Committee for partisan purposes is enormous. There is, for example, the risk that the Majority might use the vast powers of the Committee to inflict damage on political opponents -- while shielding the Majority's own political allies. Although the temptations are great, they are not irresistible. For example, when a Senate Committee probed the Watergate affair, Chairman Sam Ervin and the ranking Republican member Howard Baker, worked as partners -- preventing the investigation from becoming overly partisan. The same was true of the Iran-Contra investigation, which Senator Glenn, the Governmental Affairs Committee Ranking Minority Member, hoped would be a model for the investigation into campaign finance activities in 1997.

The Committee did not follow these models of bipartisanship. The Majority focused almost exclusively on Democratic-affiliated individuals and organizations, issuing every subpoena that was proposed if it sought information about Democratic activities but declining to approve dozens of subpoenas seeking legitimate information about Republican activities. There was an even greater imbalance in allocation of hearing days: nearly 90 percent of the hearing days addressed allegations of wrongdoing by Democrats. As a result, the investigation soon lost credibility with the public, and the country was denied the opportunity for a fair and balanced look at the conduct of both Democrats and Republicans during the 1996 election cycle.

The story of how the Committee was used for partisan purposes is demonstrated by the Committee's choice of procedures: the issuance and enforcement of subpoenas, the selection and questioning of witnesses, and the allocation of public hearing time. By examining these procedural choices, the public may be able to understand how the Committee's investigation into campaign finance activities failed to fulfill its potential for informing the American people and improving our democratic system.

#### **INITIAL FLOOR STATEMENTS BY CHAIRMAN THOMPSON AND SENATOR GLENN**

On January 28, 1997, Senator Fred Thompson, Chairman of the Governmental Affairs Committee, spoke on the Senate floor to outline his Committee's upcoming investigation into campaign abuses and irregularities in the 1996 election cycle.<sup>1</sup> He laid out the parameters and principles by which he envisioned the investigation would be conducted. The Chairman discussed

several general themes. First, he anticipated using the forum of the investigation and its hearings to advance the reform of campaign finance laws.<sup>2</sup> He also stated that “those of us with responsibilities in this area, whether it be the President or members of Congress, cannot let the call for reform serve to gloss over serious violations of existing laws.”<sup>3</sup>

Second, Chairman Thompson proposed that the investigation include an examination of improper activities -- not just illegal ones. While the Chairman viewed the scope of activities to be investigated as those in the 1996 federal election cycle, he stated that the Committee should also investigate “facts that may have occurred before the 1996 campaign that are relevant to or shed light upon that campaign or the operation of our government...”<sup>4</sup> This statement suggested that the Committee would conduct a meaningful investigation of the fundraising activities of the Democratic National Committee and the current President because those activities would be placed in proper perspective by also investigating comparable activities of the Republican National Committee and previous administrations.

Chairman Thompson described the work of the Committee in this way:

[I]t is an inquiry into illegal or improper campaign finance activities in the 1996 Presidential campaign and related activities. . . . Certainly, our work will include any improper activities by Republicans, Democrats, or other political partisans. It is of extreme importance that our investigation and our hearings be perceived by the American people as being fair and evenhanded. . . . It simply means letting the chips fall where they may. We are investigating activities here, not political parties.<sup>5</sup>

The Chairman also indicated a desire to work with Senator Glenn, the Committee’s Ranking Democrat, and to seek consensus on important issues. He stated:

We hope that in all cases the work of the Committee can be done by the staff in a cooperative fashion. Consensus should emerge on which issues are the most serious and those matters which will receive the greatest consideration. But if legitimate disagreement arises as to priorities, the Majority will in no way limit the Minority’s rights to investigate any and all parties within the jurisdiction of the Committee. Moreover, the Minority will be given the opportunity to call witnesses in for public hearings if we cannot agree upon a joint witness list.<sup>6</sup>

Senator Glenn also spoke on the Senate floor on January 28, 1997. In response to Chairman Thompson’s comments that the Committee’s investigation should be used to promote meaningful campaign finance reform, Senator Glenn agreed that the hearings were imperative for discovering problems and fixing the laws.<sup>7</sup> Recognizing that reform was unlikely until public pressure becomes “overwhelming,” Senator Glenn expressed hope that the hearings would provide impetus for such change by stirring the necessary interest in the American people.<sup>8</sup>

Senator Glenn also offered his views on how the Committee’s investigation should be

conducted. He noted that bipartisanship was crucial to a meaningful investigation and publicly pledged support for Chairman Thompson's efforts to conduct such an investigation.<sup>9</sup> He also suggested that the Chairman "establish objectives for the investigation without making the inquiry too narrow and thereby risk[ing] at least a perceived partisan approach."<sup>10</sup> Senator Glenn recommended laying out certain binding ground rules pertaining to scope, duration, process, and resource allocation<sup>11</sup> and proposed that "soft money," one of the most pervasive problems in the campaign finance system, be a focus of the investigation.<sup>12</sup>

Addressing the relationship between the Majority and the Minority with respect to the investigation, Senator Glenn said, "[T]o assure that the Committee's investigation is fair, bipartisan, and legislatively productive, I think it is vital [that] the Senate define the scope and procedures and duration of the investigation in the omnibus committee funding resolution."<sup>13</sup> He later described his specific suggestions for ensuring a bipartisan investigation:

There should...be a specification of even-handed procedural ground rules for the investigation. For example, the majority and minority should have contemporaneous access to all documentary evidence received by the Committee. The majority and minority should have the right to be present at and participate equally in all depositions and investigatory interviews. And the majority and minority should have equal opportunity to obtain and present relevant testimonial and documentary evidence on the subjects of the committee's inquiry.

These are just safeguards for a fair and bipartisan inquiry which is in keeping with contemporary Senate practice. This is the way the last several Senate investigations have been done, and Senate practice from investigations of this kind dictate that it should be expressly spelled out before the actual investigating begins so we do not get into an unpleasant disagreement in the middle of the hearings.<sup>14</sup>

These remarks, made by Chairman Thompson and Senator Glenn on January 28, 1997, were in anticipation of the Committee's first public meeting where the issues raised on the Senate floor would be discussed and debated among Committee members.

## **ORGANIZATIONAL MEETING**

On January 29 and 30, 1997, the Governmental Affairs Committee held a two-day meeting to organize its activities for the 105th Congress. The Committee's organizational meeting focused on the Special Investigation and the members discussed four issues relevant to that investigation: budget, scope, procedures, and deadline.

### **A. Budget**

On January 29, 1997, Chairman Thompson announced his proposal to spend \$6.5 million

"for a one-time non-recurring budget for 1997...for the investigation...into foreign campaign contributions and fund-raising activities emanating from the 1996 Presidential campaign and related matters."<sup>15</sup> Because the Majority had not, as required by Committee rules,<sup>16</sup> provided the Minority with advance notice of this unprecedented budget request, Senator Glenn objected to approving the budget on procedural grounds.<sup>17</sup>

Senator Glenn and the other Minority Members also objected to Chairman Thompson's budget proposal on substantive grounds. The request for \$6.5 million to devote to the investigation was \$2 million more than the entire Committee's recurrent budget that is provided for the Committee to carry out all of its other functions in 1997.<sup>18</sup> The Minority also noted that the Chairman provided no justification for his sizable request; although the request was far in excess of any other initial request for a major Senate investigation, including the Watergate and Whitewater investigations, even when inflation was taken into account.<sup>19</sup> And finally, the Democrats noted that although the proposed budget was divided into line items for salary, hearings, travel and equipment, no basis for these figures was provided.<sup>20</sup>

During the second day of the organizational meeting, held on January 30, 1997, Senator Glenn offered a substitute amendment to the Committee funding resolution. Senator Glenn proposed that instead of the \$6.5 million budget requested by the Chairman, that the Committee instead request \$1.8 million for one year.<sup>21</sup> If the \$1.8 million proved insufficient, Senator Glenn suggested that the Committee could, at the appropriate time, vote to authorize additional funds. In response to this proposal, Senator Cochran stated that \$1.8 million would only allow an investigation of a few months' duration.<sup>22</sup> Senator Glenn then clarified his suggestion by stating, "What I am proposing is that we start out with a reasonable amount of money, and I will be the first to join my distinguished colleague from Mississippi in voting for more money if we see that that is what is needed to continue the investigation."<sup>23</sup> Chairman Thompson stated that he believed Senator Glenn's proposal was "inadequate"<sup>24</sup> and that his \$6.5 million figure should be forwarded to the Rules Committee for approval. The Chairman suggested that if any of the \$6.5 million was not expended during the investigation, those funds would be returned to the United States Treasury. This suggested procedure prompted Senator Glenn to note that the Committee does not traditionally fund any project or federal program, such as child care or the Head Start program, by providing more funds than are justified and assuming that additional funds will be returned. He explained that the Congress does not stipulate that:

We will give you more money than you want, and if you do not need it, turn it back... [I]n this Committee, we have tried to get efficiencies of government, and we do not normally put out more money than we know we need for whatever the purpose is.<sup>25</sup>

Despite the agreement of most Members that each side should produce specific information on their respective requests, Chairman Thompson called for a vote.<sup>26</sup> The Committee defeated Senator Glenn's substitute amendment and passed Chairman Thompson's proposal for \$6.5 million to fund the investigation along party lines.<sup>27</sup>

## **B. Scope**

During its organizational meetings, the Committee also discussed the appropriate scope of activities to investigate. Here, the Committee members were able to find some common ground.

All Members of the Committee agreed that the investigation would include exploring any “illegal or improper” activities of Democratic fundraising surrounding the 1996 Presidential election. The Minority also sought to ensure that the Committee had the opportunity to explore similar Republican fundraising activities as well as allegations against Members of Congress -- such as improper access for contributors -- and against previous administrations in order to put current fundraising practices in perspective.<sup>28</sup> The Minority Members also stated that the Committee should investigate allegations against possible partisan activities of tax-exempt groups during the 1996 federal election cycle.<sup>29</sup> As an example, Senator Levin mentioned investigating a questionable “issue advocacy” campaign conducted on behalf of the Republican Party by Americans for Tax Reform (“ATR”) just before the 1996 election. ATR paid for this with a \$4.6 million donation from the Republican National Committee.<sup>30</sup> See Chapter 11 of this Minority Report.

Chairman Thompson seemed to accept the Democratic proposal<sup>31</sup> and assured Committee Democrats that these areas would be included, but he questioned how Democrats could on the one hand want to expand the scope, but on the other want to limit the budget.<sup>32</sup> Committee Democrats responded that they only sought to control the initial funding of the investigation because it was dramatically higher than any previous high-profile investigation since Watergate and that if additional funds were needed to conduct a truly bipartisan investigation, they would support such funding.<sup>33</sup>

During the discussion of the scope of the Committee’s investigation, Chairman Thompson stated that the scope could be an informal understanding and that he would be willing to broaden the investigation to encompass issues the Democrats thought were important to investigate.<sup>34</sup> Upon Senator Lieberman’s suggestion, however, the Committee agreed to memorialize the scope of the investigation within the authorizing resolution.<sup>35</sup> Having agreed to commit the scope of the investigation to writing, the Committee Members met the next day to consider voting on a scope document.

The next day, January 30, 1997, the Committee considered a document establishing the scope of the investigation, drafted jointly by the Majority and Minority staffs. The most significant provisions in the scope document provided that the Committee would investigate (1) all federal elections, including both presidential and congressional races; (2) improper as well as illegal campaign finance activities; and (3) certain specified substantive areas. The Committee also agreed that there would be leeway to look at matters that might have occurred before the 1996 cycle.<sup>36</sup>

The Committee approved this scope proposal unanimously, which called for an

investigation of all improper or illegal campaign finance activities, regardless of party affiliation.<sup>37</sup> Some Members cited the passage of the Committee's scope proposal as an indication that the investigation would be a bipartisan one, despite other disagreements.<sup>38</sup> While this was an important first step, matters of procedures, budget, and duration were left unresolved.

### **C. Process**

During the January 29, 1997 organizational meeting, Senator Lieberman raised the issue of procedural safeguards, suggesting that the Committee agree to an internal process agreement that would govern the operations of the Majority and Minority staffs.<sup>39</sup> Such an agreement would ensure that the entire Committee had access to the same documents as well as sufficient notice and opportunity to be present at all witness interviews and depositions.

Chairman Thompson responded that if the Committee followed its standing rules, that would be a starting point for fair treatment. He also stated that the Majority would not take advantage of the Minority and would do its best to ensure bipartisan attendance at depositions as the Committee rules provide.<sup>40</sup> Chairman Thompson did not make the same assurances with respect to Committee interviews except to state that both staff should have "equal access to [interview] results, [and] that these things will be written up and made available immediately to each side."<sup>41</sup> Lastly, the Chairman chose to abide by the regular division of Committee budgets in the Senate, providing two-thirds of any budgeted funds to the Majority and one-third to the Minority.<sup>42</sup>

When the meeting resumed the following day, January 30, 1997, there was some discussion about voting on an agreement regarding investigative procedures, but the Committee decided to allow staff to continue to work out several unresolved matters such as bipartisan attendance at all interviews.<sup>43</sup> On this issue, Chairman Thompson agreed "to make a best-faith effort with regard to significant interviews, and people are just going to have to show a little...common sense and good faith as to what is significant."<sup>44</sup> He also offered access to anything committed to writing from an interview which the other side might have missed.<sup>45</sup> Senator Glenn suggested, and Chairman Thompson agreed, to allow more time for consideration of a process agreement. Chairman Thompson said: "I think we are making progress on it, and if there is a chance that we can reach agreement on it, then I want to take that chance. So I will agree to heed your suggestion on that, and let us not take that up."<sup>46</sup> In the meantime Chairman Thompson again offered that the Committee rules would serve as a good basis for procedures to be followed.

### **D. Termination Date**

The final area addressed at the meetings on January 29 and 30 was whether the investigation should have a fixed date upon which it would terminate. Chairman Thompson was opposed to setting a termination date, referring to a book about the Iran-Contra investigation by former Senators George Mitchell and William Cohen in which they recommended against an end

date for such a large-scale investigation.<sup>47</sup> Senator Glenn considered this a critical area for the structure of the investigation to ensure against an “open-ended inquiry.”<sup>48</sup> The Chairman again suggested that Majority and Minority counsel and their staffs try to resolve some of these procedural issues.<sup>49</sup>

### **FIRST PUBLIC DEBATE ON ISSUANCE OF SUBPOENAS**

On February 7, Majority staff presented 31 document subpoenas to the Minority staff for approval by Senator Glenn. All but four of the subpoenas were for Democratic-related entities or individuals.<sup>50</sup> On February 10, the Majority gave 25 more document subpoenas to the Minority, making the subpoenas forwarded to the Minority within four days total 56.<sup>51</sup>

Under Committee rules, the Ranking Member must be afforded 72 hours to consider the subpoenas and either approve or oppose them.<sup>52</sup> If the Ranking Member opposes them, the Chairman may call a Committee meeting and put the subpoenas to a Committee vote. If a Majority of the Committee members vote for the subpoenas, they are issued. Concurrent with the delivery of the proposed subpoenas, Chairman Thompson announced a business meeting of the Committee to be held on February 13, 1997, at the end of the 72 hour period, anticipating Minority objections to the subpoenas.

At the business meeting on February 13, Senator Glenn noted his objections to the Majority’s submission of the 56 subpoenas. First, he noted that all but four of the subpoenas were for individuals and entities connected with Democratic fundraising.<sup>53</sup> Second, he objected to the fact that the Minority was never consulted regarding the subject or the substance of the subpoenas before they were submitted to the Minority.<sup>54</sup> Third, he explained that the sheer number of subpoenas for review by the Minority at one time with no notice was a monumental task. Fourth, Senator Glenn queried why the Majority had provided no substantiation for the subpoenas.<sup>55</sup> And, finally, Senator Glenn stated that these activities had been undertaken despite the fact that the Committee did not yet have an approved budget or mandate. Ultimately, Senator Glenn stated that he would give the subpoenas fair consideration and asked only that the Minority be given an adequate opportunity to review the proposed subpoenas.<sup>56</sup>

Notwithstanding these objections, the Minority voted to approve the issuance of 47 of the 56 subpoenas during the February 13 Committee meeting in order to move the investigation forward. The Committee approved the remaining nine subpoenas over the Minority’s objections, but agreed to hold them for further discussion.<sup>57</sup>

### **ALTERNATIVE RESOLUTION, S. RES. 61**

On March 4, Senator Glenn introduced on the Senate floor S. Res. 61, which was an alternative resolution for the Committee’s investigation. S. Res. 61 incorporated the scope agreement unanimously voted on the Governmental Affairs Committee, but also set forth



procedures to provide equal and contemporaneous access to witnesses as well as documents, a proposed budget of \$1.8 million, and provisions for submission of a final report no later than December 31, 1997, and consideration of the McCain-Feingold legislation, S. 25, by May 1, 1997.<sup>58</sup> This alternative resolution was ultimately not adopted by the Senate.

### **RULES COMMITTEE APPEARANCES**

At the beginning of each Congress, all Senate committee chairmen and ranking members routinely appear before the Senate Rules and Administration Committee (“Rules”) to present and support the budget requests for their Committees. The Rules Committee must then vote to authorize each Committee’s budget. Chairman Thompson and Senator Glenn appeared before the Rules Committee on February 6 and March 6, 1997 to discuss the Senate Governmental Affairs proposed budget, including its proposed budget of \$6.5 million to conduct an investigation into campaign finance activities. Also before the Rules Committee was the Governmental Affairs’ proposed scope of its investigation, which was voted out unanimously by its Members and which proposed an investigation of all “improper and illegal” campaign activities during the 1996 federal election cycle.<sup>59</sup>

During the February 6 Rules Committee meeting, Senator Glenn stated that he opposed Chairman Thompson's budget of \$6.5 million as “excessive and unjustified,” especially in light of the many other campaign finance investigations occurring in different parts of government.<sup>60</sup> Additionally, Senator Glenn noted that the Minority Members of the Rules Committee also generally supported an incremental approach to funding of the investigation.<sup>61</sup> Chairman Thompson argued that the Committee required \$6.5 million for the investigation, stating that the investigation would cover numerous allegations of fundraising practices, as exposed in the press.<sup>62</sup> The Chairman also remarked that the Committee would be exploring activities of an “unprecedented scope.”<sup>63</sup> The Rules Committee adjourned without resolving the issue.

On March 6, 1997, Chairman Thompson and Senator Glenn again appeared before the Rules Committee to discuss the funding resolution for the Governmental Affairs Committee’s investigation. During this meeting, Rules Committee Chairman John Warner offered a resolution which proposed to decrease Chairman Thompson’s proposed budget of \$6.5 million for the investigation to a budget of \$4.35 million.<sup>64</sup> Chairman Warner’s proposal also included provisions terminating the investigation on December 31, 1997, with a final report due on January 31, 1998, a month later.<sup>65</sup> These provisions represented an important effort at compromise. Chairman Warner’s provisions, however, proposed to alter the scope of the investigation by eliminating allegations of “improper activities,” and leaving the Committee only able to investigate “illegal activities.”<sup>66</sup> Both Senator Glenn and Chairman Thompson opposed this narrow definition of scope and maintained their support for the fuller scope which had been unanimously approved by the Governmental Affairs Committee.<sup>67</sup>

Senator Wendell Ford, Ranking Democrat on the Rules Committee, also proposed a resolution during the Rules Committee meeting. His proposal included the “improper and illegal”

scope language agreed to by the Governmental Affairs Committee and was identical to Senator Glenn's resolution introduced on March 4, S. Res. 61, except that it proposed an increase in the investigation budget from \$1.8 million to \$3 million.<sup>68</sup>

After debate on the proposals, the Rules Committee passed Chairman Warner's amendment and defeated Senator Ford's by a party line vote.<sup>69</sup> In taking this action, the Rules Committee undid the unanimous decision of the Governmental Affairs Committee to define the scope of its investigation to include both improper and illegal activities. The Senate Rules Committee's reversal of another standing committee's unanimous scope decision was highly unusual.<sup>70</sup>

### **FINAL FLOOR DEBATE**

On March 10 and 11, 1997, the full Senate debated S. Res 39, the resolution governing the Governmental Affairs Committee investigation, as proposed by Chairman Warner and approved by the Rules Committee.<sup>71</sup> On March 11, after a contentious floor debate in which Democrats argued vociferously against narrowing the original scope of the investigation, the full Senate considered and unanimously approved a compromise, in the form of a substitute resolution offered by Majority Leader Trent Lott.<sup>72</sup> This resolution restored the original scope unanimously approved by the Governmental Affairs Committee to investigate "illegal or improper" activities in connection with 1996 federal elections. It also reduced the budget from Chairman Thompson's \$6.5 million to \$4.35 million, and stipulated a termination date for the investigation of December 31, 1997, with a reporting date of January 31, 1998.<sup>73</sup>

During the debate on the resolution, Democrats sought specific assurances that Chairman Thompson intended to conduct a bipartisan inquiry. Until the Chairman provided certain assurances, several members were not prepared to agree to S. Res 39.<sup>74</sup>

Senator Glenn discussed the meaning of "improper" to ensure that certain issues would not be precluded from inquiry. Senator Thompson agreed to a broad interpretation of "improper" and committed to discussing with the Minority whether an issue fell inside or outside the Committee's scope.<sup>75</sup>

Senator Levin also engaged Chairman Thompson in a colloquy on procedures. During this discussion, Chairman Thompson agreed to conduct bipartisan depositions, joint investigative interviews "where feasible, . . . equal and contemporaneous access to all documents ...and...adequate notice of filing these documents."<sup>76</sup> Senator Levin and Chairman Thompson also agreed that an effort should be made to work together on developing proposals for subpoenas instead of presenting the Minority with a predetermined list of subpoenas for issuance. Chairman Thompson acknowledged that the Committee had "got off on a bit of a wrong foot with regard to subpoenas."<sup>77</sup> In addition to making specific assurances about procedure, Chairman Thompson promised that "we will have an opportunity for full discussion on any area the Senator brings up."<sup>78</sup> He also offered to work together with Democrats to set the agenda and priorities for the

investigation.

The procedures discussed on the Senate floor were never finalized in writing, nor were many of them followed.

### **THE MAJORITY IMPEDED A FAIR INVESTIGATION**

Despite earlier discussions of an internal process agreement that would govern the procedures of the investigation, as well as repeated requests and drafts forwarded by the Minority, a formal process agreement was never signed. The Minority, therefore, had to rely on informal, unwritten assurances made by the Chairman during the negotiation of the resolution. For the most part, the Majority kept to its oral assurances that the Minority would have contemporaneous access to documents, per a signed document protocol,<sup>79</sup> and to witnesses for purposes of deposition.<sup>80</sup>

However, there were serious problems with other Committee procedures. Indicia of the partisan nature of the Committee's investigation can be found in the Committee's treatment of immunity requests, notice to staff of interviews, consideration of subpoenas, and scheduling of public testimony.

#### **A. Subpoenas**

The procedures the Committee employed to draft, issue, and enforce its investigation subpoenas was an unfortunate one that may have a lasting and detrimental effort on future Senate investigations.<sup>81</sup> On January 28, 1997, when Chairman Thompson addressed the Senate chambers, he referred to a 70-year-old Supreme Court decision in which the Court held,

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not possess the requisite information -- which not infrequently is true -- recourse must be had to others who do possess it.<sup>82</sup>

By the end of the investigation, the Committee had issued 420 subpoenas for documents and testimony. Of the subpoenas, 328 were issued to obtain information about Democrats and Democratic entities. When the Committee issued these subpoenas, the Minority was often not provided its mandated 72 hour review period.<sup>83</sup> Some were even served on the subpoenaed parties before the Minority was informed that they had been issued. These were unauthorized and invalid. The Committee's procedures often deprived the Minority of the right to publicly discuss subpoenas at a Committee meeting, much less to object to them.

On the other hand, the Committee issued only 89 subpoenas requested by the Minority- and over half of those were to require deposition of individuals who would not cooperate with the Committee. Of these 89 subpoenas, nearly half went ignored by the recipient and unenforced by

the Committee.

As detailed in Chapters 40 and 41 of this Minority Report, numerous entities did not meaningfully respond to the Committee's subpoenas. The Committee's failure to enforce its subpoenas, particularly with respect to activities during the 1996 election, has created a precedent that may jeopardize the Senate's future ability to obtain information necessary to carry out its legislative responsibilities. By failing to enforce those subpoenas, we relinquished one of the most important tools available to us to govern: the ability to compel testimony.

## **B. Consideration of Grants of Immunity**

Under 18 U.S.C. § 6005(b)(2), two-thirds of the Committee must vote to immunize a witness against use of his or her Committee testimony in future criminal proceedings. This rule is intended to guard against grants of immunity that the Committee might be tempted to consider in order to receive colorful and sensational testimony, despite any negative impact on important criminal prosecutions. The Committee rules regarding the grant of immunity are intended to ensure that this important power is shared by members of both parties.

On a few occasion, the Minority delayed proposed grants of immunity in order to obtain more information about the relevance of an individual's testimony, clearer proffers from attorneys, and briefings from the Department of Justice as to its view of the impact of granting immunity on its own parallel investigation.<sup>84</sup> Despite resistance from the Majority, these steps seemed only prudent: Congress should carefully consider whether its immunity grant may interfere with or prevent a potentially important prosecution. The case of Oliver North demonstrates that after an immunized witness has testified publicly, it is difficult to uphold a successfully prosecution of that witness for serious crimes.

The Minority also delayed a few proposed grants of immunity for another purpose as well: to ensure the issuance of Minority requested subpoenas. When immunity was requested in June, at least a dozen subpoenas requested by the Minority had yet to be issued or even voted upon by the full Committee -- an opportunity afforded all Majority requested subpoenas. In order to focus the attention on these concerns, the Minority conditioned their votes on immunity to satisfactory resolution of the long-standing Minority-requested subpoenas. While the Minority was partially successful -- some of the bank subpoenas it had requested were issued -- many of its subpoena requests continued to be ignored.

Ultimately, the Minority did join the Committee and vote in favor of the majority of immunity proposals. Where the immunity proposals were not granted, the Majority did not pursue testimony from those witnesses.<sup>85</sup>

## **C. Interviews**

Despite earlier assurances, the Majority staff conducted several interviews without either

prior, or subsequent, notice to the Minority. This was particularly disturbing in light of representation on the floor of the Senate and in public session that the Chairman would make every accommodation to give the Minority the opportunity to participate in "significant interviews."<sup>86</sup>

One interview that was conducted without notice to the Minority bears special mention. On September 4, 1997 the Minority heard from outside sources that Michael Mitoma, former mayor of Carson, California, might be a hearing witness the following day. At the time of this discovery, Mitoma -- to the Minority's knowledge -- had been neither interviewed nor deposed by the Committee. Upon inquiry to Majority staff, Minority staff learned that Mitoma was in Washington, D.C. to appear before the Committee and had recently been interviewed by Majority staff.<sup>87</sup> Only after this discovery did the Minority staff have the opportunity to convince Mitoma that an additional interview with both staffs was necessary.

Listed in an appendix to the Minority Report are other interviews the Minority staff is aware were conducted by the Majority without notice to the Minority.

#### **D. Hearings**

A final indicia of the Committee's partisan investigation was the Committee's failure to provide to the Minority reasonable notice of hearing witnesses or to schedule reasonable hearings days for Minority witnesses.

During the March 11 meeting, Senators Glenn and Levin raised the issue of notification of hearing topics and witnesses. Senator Glenn said, "Obviously we would like to know as far in advance as possible what the subject of a hearing is going to be so that we can prepare for it also, right along with the Majority....And...who the witnesses are going to be..." Chairman Thompson replied, "I think we ought to give you as much as you feel like you need that is reasonable to us....I think we could strive toward a Wednesday notice" for the following week.<sup>88</sup>

In practice, the Majority consistently failed to provide even 24 hour advance notice of hearing subjects and witnesses to the Minority. On July 2, 1997, six days before the first hearing day, the Majority did provide a list of potential witnesses.<sup>89</sup> The list, however, contained 30 names of individuals who fell into several different categories, and the Majority gave no indication of when it proposed to call whom. At the time the list was issued, several of the listed individuals had neither been deposed or even interviewed by the Committee. During July, the Majority often provided less than 24 hours notice on who on the list would appear the next day. By the end of July, the Majority had called 11 of the 30 listed witnesses to testify before the Committee.<sup>90</sup>

When the hearings continued in the fall, this pattern continued. The Minority was most often provided the names of witnesses the night before they were to testify, and other times was not provided with names until the morning the testimony was to be taken. This notification was clearly contrary to both Committee rules as well as to fair and reasonable practice of conducting a

Senate investigation.

The failure of the Majority to provide notice about its public hearings was coupled with the failure of the Majority to abide by Committee rules ensuring that the Minority be afforded time to present its own witnesses and evidence. The Minority attempted to bring balance to the investigation by calling witnesses to explore Republican fundraising activities. Although Chairman Thompson explicitly stated on numerous occasions -- beginning with his first public statement on January 28 -- that he intended to allow a fair inquiry into Republican campaign activities,<sup>91</sup> only three of the 31 hearing days were devoted to investigating Republicans during the entire course of the hearings. This represented less than 10 percent of the total hearing days.

This gross imbalance in hearing days was a matter of serious contention. Time after time, promises were made that the Minority would have an opportunity to put on evidence about Republican campaign activities during the 1996 cycle. In October 1997, an arrangement was reached to end the investigative hearings and conduct three weeks of public policy hearings on campaign finance reform. Under this arrangement, the Minority agreed to temporarily relinquish its right to call witnesses for three hearing days. However, Chairman Thompson reserved the right to reopen the investigative hearings if evidence arose to warrant such an action. If that were to occur, the Committee agreed that the Minority's three hearing days would be restored. After two weeks of hearings featuring academics and activists on campaign finance reform, the Majority exercised its option to resume its investigative hearings but did not permit the Minority one, much less three, days of hearings, despite the Committee's previous agreement. No justification was ever provided.

### **CONCLUSION**

Over the years, the Senate has used its authority to conduct many significant investigations, often focusing on the operations of governmental institutions or alleged wrongdoing by specific individuals associated with the government. In 1997, the Senate authorized the Governmental Affairs Committee to conduct such an investigation, investing it with a significant opportunity to conduct a bipartisan inquiry into campaign finance activities surrounding the 1996 federal elections. Despite this opportunity, the Committee conducted a narrow examination of the campaign finance system, focusing primarily on selected activities of the Democratic Party. Nonetheless, the Committee did examine, to varying degrees, the two major political parties, a number of individuals involved in campaign finance activities and the inner workings of our electoral system. Although it was inherently a "political" investigation, it could have been conducted in a much less partisan manner. As detailed above, the Minority lacked the power to ensure that the Committee abided by certain procedural safeguards. In the end, the Committee's choice of procedures severely damaged the effectiveness of the investigation and may have damaged the ability of the Committee to conduct future investigations.

1. Congressional Record, 1/28/97, p. S716-718.
2. Congressional Record, 1/28/97, p. 718 (Thompson).
3. Congressional Record, 1/28/97, p. S718 (Thompson).
4. Congressional Record, 1/28/97, p. S716 (Thompson).
5. Congressional Record, 1/28/97, p. S716 (Thompson).
6. Congressional Record, 1/28/97, p. S717 (Thompson).
7. Congressional Record, 1/28/97, p. S719 (Glenn).
8. Congressional Record, 1/28/97, p. S719 (Glenn).
9. Congressional Record, 1/28/97, pp. S718-719 (Glenn).
10. Congressional Record, 1/28/97, p. S718 (Glenn).
11. Congressional Record, 1/28/97, p. S719 (Glenn).
12. Congressional Record, 1/28/97, p. S718 (Glenn).
13. Congressional Record, 1/28/97, p. S719 (Glenn).
14. Congressional Record, 1/28/97, p. S719 (Glenn).
15. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 5:18-22. The exact amount Chairman Thompson requested was \$6,517,121.
16. Rule 5(C), "Full Committee subpoenas." S. Prt. 105-05, Rules of Procedure of the Committee on Governmental Affairs, United States Senate, March 1997.
17. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 6:21-22 (Glenn).
18. Chairman Thompson requested \$4,533,660 for the Committee's annual recurring budget. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 5.
19. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 71 (Glenn).
20. Draft United States Senate Committee on Rules and Administration Senate Committee Budget Forms reported by Governmental Affairs Committee listing requests for 1997 and 1998.

21. This amount equaled all of the money that the Chairman investigating Whitewater received over a two-year period to conduct the Whitewater investigation. Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 22-23 (Glenn).
22. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 40 (Cochran).
23. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 42:19-23 (Glenn).
24. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 29 (Thompson).
25. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 42:11-18 (Glenn).
26. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 35 (Levin, Thompson), 37 (Specter).
27. Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 43-47.
28. Governmental Affairs Committee, 1/29/97 Org. Mtg., pp. 10-11 (Glenn), pp. 27-28 (Levin).
29. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 57 (Torricelli).
30. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 27 (Levin).
31. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 22 (Thompson).
32. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 72 (Thompson).
33. Whitewater: Comparisons of Cost and Other Selected Data with Previous Investigations, CRS Report for Congress, 96-209 GOV, January 15, 1996. Governmental Affairs Committee, 1/30/97, Org. Mtg., p. 17 (Glenn).
34. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 21.
35. Governmental Affairs Committee, 1/29/97 Org. Mtg., pp. 34-35 (Lieberman).
36. Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 1-12.

These areas included:

foreign contributions and their effect on the American political system; conflicts of interest involving Federal officeholders and employees, as well as the misuse of Government offices; failure by Federal Government employees to maintain and observe legal barriers between fund-raising and official business; the independence of the Presidential campaigns from the political activities pursued for their benefit by outside individuals or groups; the misuse of charitable and tax-exempt organizations in connection with political or fund-raising activities; unregulated (soft) money and its effect on the American political system; promises and/or the granting of special access in return for political contributions or favors; the effect of independent expenditures (whether by



corporations, labor unions or others) upon our current campaign finance system, and the question as to whether such expenditures are truly independent; contributions to and expenditures by entities for the benefit or in the interest of public officials; and to the extent that they are similar or analogous, practices that occurred in previous Federal campaigns.” Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 5:10-6:5.

37. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 12.
38. Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 14-15 (Glenn), 32 (Levin), 35 (Nickles), 43 (Lieberman).
39. Governmental Affairs Committee, 1/29/97 Org. Mtg., pp. 35-36 (Lieberman).
40. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 48 (Thompson).
41. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 49:7-8 (Thompson).
42. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 47 (Thompson).
43. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 15 (Glenn).
44. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 13:13-17 (Thompson).
45. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 14 (Thompson). While the Minority is aware of several instances in which unilateral interviews were conducted, no member of the Minority staff received such a memo from any member of the Majority staff. The only interview memoranda which were exchanged were drafted by FBI investigators detailed to the Committee under a protocol that provided for the sharing of all work product of such detailees.
46. Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 15:24-16:2 (Thompson).
47. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 77 (Thompson).
48. Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 18. See also, 1/27/97 letter from Senator Glenn to Chairman Thompson.
49. Governmental Affairs Committee, 1/29/97 Org. Mtg., pp. 75-78.
50. Subpoena 000067 (RNC), 000069 (Dole for President). The other two subpoenas went to a former Finance Chairman of the Dole for President campaign, Simon Fireman, Subpoena 000032, and his company, Aqua Leisure, Subpoena 000033. Fireman was convicted of laundering political contributions through his business to the Dole campaign. Washington Post, 10/9/97.
51. Two subpoenas were eliminated from consideration which left a total of 52 on the table. There was a duplicate subpoena going to the Hsi Lai Buddhist Temple and the International

Buddhist Progress Society, both at the same address, and a subpoena to the Presidential Legal Expense Trust which did not meet the Committee's 72-hour rule. Governmental Affairs Committee, 2/13/97 Mtg., p. 30.

52. Rule 5(C), "Full Committee subpoenas"; S. Prt. 105-05, Rules of Procedure of the Committee on Governmental Affairs, United States Senate, March 1997.

53. Governmental Affairs Committee, 2/13/97 Mtg., p. 2. Only subpoenas to the Republican National Committee, Dole for President, Simon Fireman and Aqua Leisure (Fireman's company) were served on Republican entities or individuals.

54. Governmental Affairs Committee, 2/13/97 Mtg., pp. 1-7 (Glenn). Majority staff did discuss problems with the subpoenas with Minority staff after they were submitted to the Minority and even adopted some of their changes.

55. In Senator Glenn's experience as a member on the Committee with 22 years in the Senate, such subpoenas, regardless of their numbers or origin, were always accompanied by supporting documentation, whether or not from a public source. Governmental Affairs Committee, 2/13/97 Hrg., p. 2 (Glenn).

56. Governmental Affairs Committee, 2/13/97 Mtg., p. 1.

57. Governmental Affairs Committee, 2/13/97 Mtg., pp. 30-39. The first vote was on a group of 43 subpoenas unanimously approved for service as soon as possible. The second group of nine subpoenas were also approved, though only members of the Majority voted for them. It was mutually agreed that the Majority would work with the Minority on this second group to try to resolve any concerns the Minority had with the language of the requests. Whether the concerns were resolved or not, though, the subpoenas would be issued the following week.

58. Congressional Record, 3/4/97, pp. S1927-1928. In his statement upon introduction of the resolution, Senator Glenn stated that its purpose was to let "...the public know precisely what Democrats have been proposing for this investigation, and he emphasized the need "...for a fair, bipartisan investigation...." Congressional Record, 3/4/97, p. S1928 (Glenn).

59. On January 30, 1997, Chairman Thompson reported the original resolution authorizing expenditures by the Committee on Governmental Affairs. The resolution was referred to the Senate Committee on Rules and Administration.

60. Senate Rules Committee, 2/6/97 Hrg., pp. 85-86 (Glenn) .

61. Senate Rules Committee, 2/6/97 Hrg., pp. 109-11 (Inouye); 118 (Feinstein); 128 (Torricelli); 150-151 (Ford).

62. Senate Rules Committee, 2/6/97 Hrg., p. 96 (Thompson).

63. Senate Rules Committee, 2/6/97 Hrg., p. 99 (Thompson).

64. Chairman Warner explained how he arrived at this figure: (1) The FBI agreed to detail agents to the Committee to assist in the investigation. Chairman Thompson estimated that this accounted for \$800,000 and, therefore, lowered his request to \$5.7 million. (2) Thompson's request was based on a budget for one year and since over two months of the year had already passed, the budget was reduced on a pro rated basis. Senate Rules Committee, 3/6/97 Hrg., p. 3 (Warner).

65. Senate Rules Committee, 3/6/97 Hrg., p. 4 (Warner).

66. Further provisions were made to refer only illegality found on the part of a senator to the Senate Ethics Committee. A final section provided that the Rules Committee would continue to hear matters relating to campaign finance reform. Senate Rules Committee, 3/6/97 Hrg., pp. 4-5 (Warner).

67. Senate Rules Committee, 3/6/97 Hrg., pp. 25 (Glenn), 61-62 (Thompson).

68. Senate Rules Committee, 3/6/97 Hrg., p. 78 (Ford).

69. This included Senators Cochran, Stevens, and Nickles, members of both Governmental Affairs and Rules, who were now casting their vote for a resolution which would override their original vote on the Governmental Affairs resolution. (Senator Stevens, along with Senator Roth, left the Governmental Affairs Committee early in the investigation and were replaced by Senators Bennett and Smith.)

Also, by voting for this resolution, Chairman Thompson finally seemed to have succumbed to the idea of an end date for the investigation once he received assurances that further funds would be authorized if deemed appropriate:

...I have resisted a cut-off date. But it is clear the members of this Committee understand that we need to -- I would love to finish by the end of the year. . . .But if we do not, I think the Committee understands and the Congress now understands that we will be right back, and for good cause you will extend our time and our money. Am I not correct?  
Senate Rules Committee, 3/6/97 Hrg., p. 64:5-13 (Thompson).

Chairman Thompson also confirmed that with the approval of his Ranking Member, Senator Glenn, this investigation could be conducted out of the Committee's recurring budget already approved by the Senate, and the Rules Committee would have no say in the subjects or standards of such investigation. Senate Rules Committee, 3/6/97 Hrg., p. 73 (Thompson).

70. Senate Rules Committee, 3/6/97 Hrg., pp. 6-7 (Ford).

71. Congressional Record, 3/10/97, pp. 2057-2078. In addition to the debate being managed by Rules Committee Chairman Warner and Governmental Affairs Committee Ranking Member

Senator Glenn, Senators Hatch, Wellstone, Cochran, Levin, Nickles and Feingold also made statements on the Senate floor. Congressional Record, 3/10/97, pp. 2057-2078.

72. Congressional Record Vote No. 29, pp. S2124-2125. The vote was 99-0; Senator Dodd, as immediate past General Chairman of the Democratic National Committee, voted “present”.

73. See S. Res. 39, 105th Cong., 1st Sess.

74. Congressional Record, 3/11/97, p. S2119 (Levin). Senator Levin was prepared to offer an amendment on procedures but held a colloquy with Chairman Thompson instead. Congressional Record, 3/11/97, pp. S2119-2121.

75. Congressional Record, 3/11/97, pp. S2118-2119 (Glenn).

76. Congressional Record, 3/11/97, p. S2119-2121 (Thompson, Levin).

77. Congressional Record, 3/11/97, p. S2118 (Thompson).

78. Congressional Record, 3/11/97, p. S2119 (Thompson).

79. United States Senate Governmental Affairs Committee Security Procedures and Other Protocols, 4/1/97.

80. As far as the Minority knows, the Minority was given notice of and participated in all depositions, though not always in a timely manner. Approximately two-thirds of the way through the main investigation, a Majority staff began to electronically mail the next day's schedule to the entire investigation staff, both Majority and Minority. Though this was an enormous help, it was often the first notice the Minority received of a deposition or interview to be held the following day.

81. These issues are discussed in more detail in Chapter 38, “Republican Compliance Issues”.

82. Congressional Record, 1/28/97, S716 (Thompson) (quoting McGrain v. Daugherty, 273 U.S. 135, 175 (1927)).

83. See Rule 5(C), “Full Committee Subpoenas.”

84. Governmental Affairs Committee, 6/12/97 Mtg.

85. For example, on June 12, the Committee rejected grants of immunity for 15 Hsi Lai Temple monastics, all proposed by the Majority. Governmental Affairs Committee, 6/12/97 Mtg. By the time the Committee reconsidered these requests, the Majority unilaterally reduced the list. Governmental Affairs Committee, 6/27/97 Mtg.

86. Congressional Record, 3/11/97, p. S2120 (Thompson).

87. There was always an understanding that if it was not feasible to advise the other side, the interview would go ahead. After the public hearings had been concluded, Minority Counsel was advised that Steve Young, son of Ambrous Young, was in town and available to meet at Union Station late one evening. Minority Counsel conducted an informal interview.

88. Governmental Affairs Committee, 6/27/97 Mtg., pp. 43-44. On another occasion, Senator Glenn said, "....(W)e would hope that we would be able to be informed of what the subject of the hearing is and the witness list at the same time that the hearing is called, a week in advance. I think that is only fair, and it puts everybody on the same footing." Chairman Thompson replied, "We will do our best to do that." Governmental Affairs Committee, 6/27/97 Mtg., p. 45:15-20.

89. 7/2/97 Memo from Majority Counsel to Minority Counsel with attached "Hearing Subpoena List".

90. Richard Sullivan (July 9, 10); Juliana Utomo, Harold Arthur, James Alexander (July 15); Gary Christopherson, Paul Buskirk, Jeffrey Garten, Robert Gallagher, John Dickerson (July 16); Paula Green, Timothy Hauser, William Ginsberg (July 17). In addition, three witnesses were called who were not on the July 2 list: Thomas Hampson, summary witness on the Lippo Group (July 15); William McNair, Central Intelligence Agency (July 16); John Cobb, Counsel to Special Investigation (July 17). Special Investigation Witness List, [http://www.senate.gov/~gov\\_affairs/witness.htm](http://www.senate.gov/~gov_affairs/witness.htm).

91. Congressional Record, 1/28/97, p. S716 (Thompson).